

## Office Action Summary

Application No.

10/720,931

Applicant(s)

KAMMLER ET AL.

Examiner

Paul A. D'Agostino

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6 and 91-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6 and 91-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>07/30/2009</u> .                         |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                          |

### **DETAILED ACTION**

This responds to Applicant's Arguments/Remarks filed 02/04/2009. Claims 1, 91, and 93-94 have been amended. Claims 4-5, and 27-90 stand cancelled and Claims 27-90 stand withdrawn and shall be cancelled as part of the response to this Office Action. Claims 1-3, 6, and 91-97 are now pending in this application.

### ***Remarks***

1. Examiner wishes to thank Applicant for an unscheduled Examiner-requested interview on 07/29/2009. The details of which can be found in a separate Interview Summary dated 07/29/2009.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 6, and 91-92 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 (Page 3 Line 1) recites "identifying a start of a first virtual gaming session associated with the player account, wherein said start of the first virtual gaming session occurs in response to an entry of value on the one gaming machine". It is not clear from the claim and the specification how the player playing with cash is associated with his account. Applicant's

Art Unit: 3714

Specification [0029] provides "a PIN alone without a player card may be used to provide player identity to the gaming machine; and a card alone without a PIN may be used to provide player identity. Alternatively, any of several biometric devices may be used to identify the player..." [0029]. It appears from the disclosure that more is needed than mere entry of coins to establish the requisite association with the player account as claimed. The player must also enter a PIN or player tracking card or both. Appropriate attention is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6, and 91-97 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,142,876 to Cumbers (Cumbers).

#### **In Reference to Claim 1 and 91**

Cumbers discloses a method of operating a gaming system (Fig. 2 "gaming device" 34 and "slot machine" Col. 5 Lines 5-6) having a central authority ("casinos" Col. 1 Lines 11 and Claim 8) associated with a database (Fig. 3 "player's tracking account file" 61) and known player tracking systems (Col. 6 Lines 62-63) and interconnected to a

Art Unit: 3714

plurality of gaming machines (Fig. 3 “gaming machine” 34 and multiple games “slot machines” Col. 1 Line 7), comprising:

establishing in the database a player account associated with at least one player (Fig. 3 file 61a);

providing a player card to the one player, said player card being associated with the player account (“identification card (not shown issued in the traditional manner” Col. 7 Lines 1-2);

identifying a start of a first regular gaming session associated with the player account, wherein said start of the first regular gaming session occurs in response to an insertion of the player card into the one gaming machine (Col. 7 Lines 1-9);

identifying an end of the first regular gaming session associated with the player account, wherein said end of the first regular gaming session occurs in response to a removal of the player card from the one gaming machine (Col. 7 Lines 1-9);

collecting, transferring, and storing in the player account of the database first activity data from the one gaming machine, wherein said first activity data corresponds to player activity on the one gaming machine that occurred during the first regular gaming session (col. 7 Lines 1-9);

identifying a start of a first virtual gaming session (Col. 2 Lines 4-67; Col. 3 Lines 1-55) associated with the player account (Col. 7 Lines 10-45), wherein said start of the first virtual gaming session occurs in response to an entry of value on the one gaming machine (“player inputs coins” Col. 5 Lines 34-42 and “the player need do nothing other than sit at the device 34 and play” Col. 5 Lines 43-53 and “the facial identification image

Art Unit: 3714

data is assigned at 66 and stored in a corresponding new doe account file which is opened and the points are allocated thereto" Col. 7 Lines 27-30);

identifying an the end of the first virtual gaming session wherein said end occurs before the start of a first regular gaming session and in response to the insertion of the player card into the one gaming machine ("should the player desire to join in the system 10, when they do so, with reference to Fig. 1, the system 10 compares the acquired image at 66 with the doe image data entries 52a-b and if a corresponding image is found, the accrued points are transferred at 72 to a now, players identified, account file 61a" Col. 7 Lines 31-45);

collecting, transmitting, and storing in the player account of the database second activity data from the one gaming machine, wherein said second activity data corresponds to player activity on the one gaming machine that occurred during the first virtual gaming session (Col. 7 Lines 25-45).

#### In Reference to Claims 2-3 and 95-96

Cumbers discloses wherein said step of transmitting consists of transmitting the activity data at two separate times; wherein said first regular activity data is transmitted at the end of said first regular gaming session and said second activity data is transmitted at the end of said first virtual gaming session. (Fig. 3 wherein the decision nodes 64, 48, 66, and 72 indicate various decision triggering events that cause the data to be transferred to player tracking files at the same and different times based on at least one of player initiated image identification, system initiated image identification,

Art Unit: 3714

casino personnel initiated identification, player carding in, player carding out, and a combination of any of these).

In Reference to Claims 91

Cumbers discloses:

identifying a start of a second virtual gaming session associated with the player account, wherein said start of said second virtual gaming session occurs:

(i) after the end of the first regular gaming session; and

(ii) in response to an indication that the removal of the player card from the one gaming machine occurred while a game was in progress on the one gaming machine {or}, while credits were available for play on the one gaming machine, or both (after the player cards out tracking on the card stops but new doe files are created to capture player activity);

identifying an end of the second virtual gaming session associated with the player account, wherein said end of the second virtual gaming session occurs in response to a re-insertion of the player card into the one gaming machine (essentially the process described in the rejection of Claim 1 repeats Col. 7 Lines 1-45);

collecting, transferring, and storing in the player account of the database third activity data from the one gaming machine, wherein said third activity data corresponds to player activity on the one gaming machine that occurred during the second virtual gaming session (Col. 7 Lines 25-45).

In Reference to Claims 93-94

See rejection of Claims 1 and 91 and wherein start of said first virtual gaming session occurs after the end of the first regular gaming session; and in response to an indication that the removal of the player card from the one gaming machine occurred while a game was in progress on the one gaming machine, while credits were available for play on the one gaming machine, or both (player removes player tracking card as described in Claim 1 which can happen at any time during game play); and

wherein identifying a start of a second regular gaming session associated with the player account occurring after the end of the first virtual gaming session and in response to the re-insertion of the player card into the one gaming machine (See the rejection of Claims 1 and 91 and where the cycle just repeats itself in that if traditional play via card in-card out is not in progress then the passive system of Cumbers is actively gathering player data in doe files for transfer and storage in player files in the player file tracking database).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3714

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 6 and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cumbers.

Cumbers discloses a system substantially equivalent to Applicant's claimed invention. However, Cumbers is not explicit wherein transfer occurs at a single time and said single time is at the end of the first regular gaming session. It would have been an obvious matter of design choice to specify that the files are transferred at any given time, since Applicant has not disclosed that the transfer timing solves any stated problem or is for any particular purpose and it appears that the invention would perform



equally well with some efficiencies like minimizing the number of data exchange traffic over the system.

### ***Response to Arguments***

10. Applicant's arguments, see Applicant's Arguments/Remarks pages 21-31) filed 02/04/2009, with respect to the rejection(s) of Claim(s) 1-3, 6, and 91-97 under 35 U.S.C. § 103(a) have been fully considered and are persuasive. Examiner was also considering U.S. Patent Pub. No. 2001/0046893 to Giobbi et al. as indicated in Examiner's Interview summary (filed 07/30/2009) however Applicant's argument would be equally persuasive as Giobbi reasonably only contemplates card tracked game play. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 6,142,876 to Cumbers. Cumbers employs an anticipatory combination of passive player tracking before, during, and after the use of traditional player card tracked game play and wherein sessions are demarcated by discrete events, most notably card-in and -out swipe events and player image recognition events.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided in the Notice of References Cited.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. D'Agostino whose telephone number is

Art Unit: 3714

(571)270-1992. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m..

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/  
Supervisory Patent Examiner, Art Unit 3714

/Paul A. D'Agostino/  
Examiner, Art Unit 3714